

EXHIBIT 1

7374j smarchi onne

0001

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

MIYANO MACHINERY USA INC.,)
)
Plaintiff,)
)
-vs-) CIVIL ACTION
) NO. 08 C 526
MIYANOHI TEC MACHINERY,)
INC., THOMAS ("TOM") MIYANO)
a/k/a TOSHI HARU MIYANO and)
STEVEN MIYANO, a/k/a)
SHI GEMORI MIYANO,)
)
Defendant.)

11

12 DEPOSITION OF HENRY MARCHIONNE

13 MARCH 3, 2008 - 10:04 A.M.

14

15 The deposition of HENRY MARCHIONNE,
16 taken pursuant to the Rules of Civil Procedure
17 for the United States District Courts pertaining
18 to the taking of depositions, taken before Jerry
19 Satterlee, a Certified Shorthand Reporter within
20 and for the State of Illinois, at 77 West
21 Washington Street, Suite 900, Chicago, Illinois.

22

23

24

7374j smarchi onne
24 Q. Was there a Japanese ci ti zen who
0091

1 reported to you who was the bookkeeper of Mi yano
2 USA at that time?

3 A. What, ' 92 to --

4 Q. ' 92 to ' 96.

5 A. Yes, it would be the bookkeeper. I
6 don't recall which one it was. I don't have the
7 years.

8 Q. During that four-year period when you
9 were president, the bookkeeper for Mi yano USA
10 would report the profits to you and then would you
11 report the profits to Mi yano Machi nery Japan?

12 A. No.

13 Q. The bookkeeper would report the
14 profits directly to Mi yano-Japan?

15 A. Or through the general manager who
16 would be a Japanese ci ti zen.

17 Q. And in your words, the money end was
18 handled by the Japanese, correct?

19 A. Yes, that is correct.

20 Q. And in your words, more than half of
21 the profit of Mi yano USA went directly to Mi yano
22 Machinery Inc., the Japanese corporation, correct?

23 A. Yes.

24 Q. That has always been the case,

0092
1 correct?

2 A. Yes.

3 Q. When was the first time that you
4 learned that Tom Mi yano was working -- Let me
5 withdraw that.

7374j smarchi onne

6 When was the first time that you
7 I earned about Mi yanoHi tec?

8 A. I think it was 2006.

9 Q. Approximately what month?

10 A. Maybe in the middle of the year.
11 Maybe May, something like that. I am not sure.

12 Q. Was it before the IMTS happened in
13 2006?

14 A. Yes, I think so. Yes.

15 Q. Let me just finish up one piece of the
16 pie on the finances of MMU and the money flowing
17 to Japan.

18 Do you know what the sales revenue
19 for Mi yano USA was in 2004 to the nearest million
20 dollars.

21 A. The what?

22 Q. The sales revenue.

23 A. Somewhere between 25 and 30 million,
24 if I recall right.

0093

1 Q. And I believe you testified that in
2 '04 your best approximation sitting here today was
3 that between one and two million dollars of that
4 was profit that went directly to Japan?

5 A. If my guessing is right. But it is
6 all I am just guessing.

7 Q. You are in a better position to guess
8 than I am.

9 A. Right. Okay.

10 Q. That is all written down somewhere?

11 A. Yes.

7374j smarchi onne

0125

1 Society of Manufacturing Engineers. I have a lot
2 of experience in machinery and machine tools.
3 Not only used them and ran them, but trained
4 people.

5 And that is my expertise. And that
6 is why I think Miyano uses me because I am a good
7 tool to sell their product and show people why
8 they should buy Miyano and not buy something
9 else. I can point out the qualities of the
10 machine. So when I talk about reputation and
11 that, I know what I am talking about because I
12 know what it takes to sell something that is
13 superior to something else. And price is very
14 important, and, of course, Miyano has to be very
15 careful. That is why I am concerned about
16 MiyanoHi tec. He is going to be infringing on our
17 market. It will hurt us.

18 And I know -- I know you say I am
19 just speculating, but if you see the same name
20 and they see Tom Miyano, they are not going to
21 ignore it and they know him. So you say I am
22 just guessing. Wouldn't you go over to say hello
23 to Tom if you knew him and he will try to push
24 his product on you. So I know it will help him.

0126

1 I don't think that it is fair that
2 Miyano with some 34 to 36 years of building up a
3 reputation and then he is going to use the name
4 and steal part of it from us.

5 MR. MANZO: Thank you. Nothing further.

7374j smarchi onne

6 MR. BAKER: Just a couple of followups.

7 THE WITNESS: Sure.

8 FURTHER EXAMINATION

9 BY MR. BAKER:

10 Q. Have you ever been to India?

11 A. No.

12 Q. Do you know anything about the
13 manufacture of machine tools in India?

14 A. No. I have heard a little bit about
15 it.

16 Q. But you don't know anything?

17 A. I don't know personally, no.

18 Q. So you have no way of saying whether
19 or not a machine tool built in India would be of a
20 lesser or higher quality than one built anywhere
21 else?

22 A. No. What I base it on, so you
23 understand that I am not just throwing something
24 out there, every machine tool that ever hit the
0127

1 market from wherever never starts out as a
2 prototype. Okay. It will always have problems.
3 Even automobiles. You know, automobiles, you
4 know what I mean. And that little phase, whether
5 it is just a little bit or a lot, it will affect
6 us. I know it definitely.

7 Q. But you don't know whether or not the
8 machine tools built in India will be of a higher
9 or lower quality than those of Miyano, correct?

10 A. No, I am only guessing, yes.

11 Q. As you say, you don't know what the
12 quality will be of the machine tools that

7374j smarchi onne

13 Mi yanoHi tec will sell because they don't even have
14 any on the market?

15 A. They don't so I couldn't.

16 Q. So there is no way for you to evaluate
17 whether or not Mi yanoHi tec products are of a
18 higher or a lower quality than those of Mi yano
19 USA, correct?

20 A. At this point, no.

21 Q. There is no way of you knowing?

22 A. No.

23 Q. Literally?

24 A. No.

0128

1 Q. Not figuratively, but literally no way
2 of you knowing, right?

3 A. That is correct.

4 Q. So you are just trying to look into
5 the future and prognosticate, guess what is going
6 to happen?

7 A. Well, based on my knowledge of things
8 in the past with other companies.

9 Q. But, again, you have never been to
10 India?

11 A. No.

12 Q. And you don't know anything about
13 machine tools that are built in India?

14 A. No.

15 Q. Would you agree with me that there are
16 parts of the machine tool industry who believes
17 that machines built outside of Germany aren't
18 worth anything?

19 A. It is possible, yes. 7374j smarchi onne

20 Q. There are those who literally believe
21 that the machine tools in Germany are the best in
22 the world and everything else is of an inferior
23 quality, is that right?

24 Is that a yes?

0129

1 A. I don't know. I guess so.

2 Q. Have you ever run into that in your 53
3 years of experience?

4 A. Of what? Knowing that the machines
5 from Germany -- Repeat.

6 Q. Knowing people in the machine tool
7 industry who believe and have told you that
8 machine tools built outside of Germany are
9 inferior to those -- I am sorry -- that machine
10 tools built inside of Germany are superior to
11 machine tools built outside of Germany; have you
12 ever run into that kind of person?

13 A. Yeah, I guess so. There are remarks
14 of that.

15 Q. And you mentioned price as an
16 important factor in all of this. Are you saying
17 that if Tom Miyano's machines at Hi tec were sold
18 at a price that was higher than yours that you
19 wouldn't have a problem with Tom Miyano using his
20 family name?

21 A. No, I didn't say that.

22 Q. I just want to be clear. But price is
23 a critical factor?

24 A. It is a factor certainly.

0130

EXHIBIT 2

COPY

1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIYANO MACHINERY USA,,
Inc.,

Plaintiff,

-vs-

MIYANOHITEC MACHINERY,
INC., THOMAS ("TOM") MIYANO
a/k/a TOSHIHARU MIYANO and
STEVEN MIYANO, a/k/a
SHIGEMORI MIYANO,

Defendant.

CIVIL ACTION
NO. 08 C 526

DEPOSITION OF AKIHIKO MINEMURA

MAY 19, 2008 - 10:15 A.M.

The Deposition of AKIHIKO MINEMURA,
taken pursuant to the Rules of Civil Procedure
for the United States District Courts pertaining
to the taking of depositions, taken before Jerry
Satterlee, a Certified Shorthand Reporter within
and for the State of Illinois, at 200 West Adams
Street, Suite 2850, Chicago, Illinois.

<p>1 Q. How many GN machines did MMU sell 2 between 2000 and 2007? 3 A. For exact number I have to 4 investigate. 5 Q. Can you give me an estimate sitting 6 here today? 7 A. You mean year 2000 to 2007? 8 Q. Correct. 9 A. About twenty. But I am not sure. 10 Q. Approximately how many units total 11 were sold between 2000 and 2007 by MMU? 12 MR. MANZO: Object to form. 13 BY THE WITNESS: 14 A. You mean the machines that our 15 company sold between the years 2000 and 2007? 16 BY MR. BAKER: 17 Q. Correct. 18 A. For exact number I would have to look 19 at documents. I believe it was somewhere around 20 1500 units. I believe fewer than 1500 units. 21 Q. And you said earlier I think MTV -- 22 not MTB as in boy but MTV as in volcano? 23 A. V as in victory. 24 Q. Sticking with GN again, do you have an 54</p>	<p>1 MR. MANZO: I am just saying that it is not 2 listed on your exhibit. 3 MR. BAKER: Are you saying that use of the 4 marks is not listed? 5 MR. MANZO: No, I am not saying that. 6 MR. BAKER: Good. Then your objection is 7 noted and we can move on because obviously that 8 is what we are talking about. 9 BY THE WITNESS: 10 A. That is not what I meant. 11 BY MR. BAKER: 12 Q. What did you mean? 13 A. You mean about what? 14 Q. About how many GN units were sold in 15 each of those years? 16 A. Because I was asked to guess, I 17 simply suggested that you divide number twenty by 18 number of years in question. But that does not 19 mean that I believe equal number of units were 20 sold in each of those years. 21 Q. And just to be clear, you were asked 22 to approximate and not to guess. What I am now 23 asking you is now starting with the most recent 24 year 2007, how many GN units were sold bearing the 56</p>
<p>1 idea of how many GN machines were sold in the year 2 2000? 3 A. I cannot recall right now. 4 Q. How about 2001? 5 A. As I said before, I have heard exact 6 numbers, numbers of units sold in individual 7 years. I would have to look into -- read the 8 documents so I cannot tell you exactly. 9 Q. That is why I am asking for 10 approximations, Mr. Minemura. So approximately 11 how many GN units were sold by MMU in the year 12 2001? 13 A. Simply put, as I said the total of 14 twenty units -- approximately twenty units were 15 sold. So if you just simply divide this number 16 twenty by six, that is about the estimate. 17 Q. So it is your testimony that an equal 18 number of GN units were sold in each of the years 19 between 2000 and 2007? 20 MR. MANZO: Object to the form and object 21 to the scope of this line of questioning not 22 being identified in the 30(b)(6) notice. 23 MR. BAKER: Are you suggesting that this 24 isn't relevant to the use of the triangle mark? 55</p>	<p>1 triangle logo? 2 MR. MANZO: Objection, form. 3 BY THE WITNESS: 4 A. As far as I know, at least one unit 5 was sold. It was at least one sale. 6 BY MR. BAKER: 7 Q. How about 2006? 8 A. Right now I can't recall. 9 Q. 2005? 10 A. As I said before, I cannot recall the 11 exact number of units sold in each of those 12 years. 13 Q. So sitting here today, you are not 14 prepared to testify about the use of the triangle 15 mark on the GN machines during each of those 16 years, is that accurate? 17 MR. MANZO: Object to the characterization, 18 object to the scope of the question. 19 THE INTERPRETER: Could you reread the 20 question. 21 (THE QUESTION WAS READ.) 22 MS. LEWIS: Excuse me. Not prepared? 23 (THE QUESTION WAS RETRANSLATED.) 24 57</p>

<p>1 and other parts of the world. 2 BY MR. BAKER: 3 Q. Wasn't Tom Miyano instrumental in 4 building that brand name in Japan and in the U.S.? 5 A. I don't believe so. 6 Q. You don't believe so? That is not his 7 last name? 8 MR. MANZO: Asked and answered. 9 BY THE WITNESS: 10 A. Our company was selling machines 11 under Miyano name before Mr. Miyano became 12 president. 13 BY MR. BAKER: 14 Q. And during the entire time that he was 15 the president in Japan and in the U.S., your 16 testimony is that Tom Miyano had nothing to do 17 with the brand recognition of his own last name in 18 the machine tool trade? 19 A. I didn't say nothing at all. 20 Q. So now I am asking you. Is it 21 something? Wasn't Tom Miyano responsible for some 22 continuation of the brand recognition of his own 23 last name? 24 A. I don't know. There might have been</p> <p style="text-align: right;">86</p>	<p>1 today, correct? 2 A. Where? 3 Q. America. 4 A. You mean personally or in business? 5 Q. In the machine tool trade? 6 A. Whether or not he is using it now? 7 Q. Yes. 8 A. That is why we filed the lawsuit. 9 Q. Yes. You recognize that he is using 10 his own name now, right? 11 A. The way I see it is that the brand 12 Miyano has been already established as a product 13 brand name apart from Mr. Miyano. 14 Q. But you will agree with me that Tom 15 Miyano was responsible for continuing while he was 16 at Miyano Machinery to create goodwill associated 17 with his name in the machine tool trade? 18 A. I don't know exactly, but since he 19 was the president of Miyano company I believe 20 that he took some activity, he did something to 21 contribute to the goodwill. 22 There is something I need to say yet. 23 There was a question about why -- how the use of 24 Miyano confuses customers at the show. Was there</p> <p style="text-align: right;">88</p>
<p>1 contribution by him. 2 Q. Didn't he start MMU? 3 A. You mean Mr. Miyano? 4 Q. Yes. Toshiharu Miyano? 5 A. You mean he started MMU? 6 Q. Yes. 7 MS. LEWIS: Excuse me. Could you reread 8 the question. 9 (THE QUESTION WAS READ.) 10 THE INTERPRETER: I am sorry. I 11 misinterpreted the question. 12 MR. BAKER: No problem. 13 (THE QUESTION WAS RETRANSLATED.) 14 BY THE WITNESS: 15 A. I don't know what you mean exactly by 16 starting. 17 BY MR. BAKER: 18 Q. Was he the person who created MMU? 19 A. I think the correct way to say it is 20 that MMJ board decided to start MMU in the U.S. 21 Q. Who was the head of the board when 22 that decision was made? 23 A. Mr. Toshiharu Miyano, the president. 24 Q. It is his last name that he is using</p> <p style="text-align: right;">87</p>	<p>1 such a question? 2 Q. Well, let me ask you a different 3 question. Is that all right with you? 4 A. Okay. He would rather hear the same 5 question again. 6 Q. I think he has answered all the 7 questions. If he has something to add to a 8 specific question, I don't have a problem with it. 9 A. I decline. 10 MR. MANZO: What? 11 BY THE WITNESS: 12 A. I decline to add more. 13 MR. MANZO: Can we take five now? 14 MR. BAKER: In a minute. 15 BY MR. BAKER: 16 Q. Has MMU conducted any surveys related 17 to any likelihood of confusion between MiyanoHitec 18 and MMU or between Tom Miyano and MMU or between 19 Steven Miyano and MMU? Any surveys at all? 20 A. That I believe you are asking about 21 three different subjects. For one, you mentioned 22 MiyanoHitec and MMU, then between Steve Miyano 23 and MMU, and then between Tom Miyano and MMU. Am 24 I understanding correctly? If I interpret what</p> <p style="text-align: right;">89</p>

1 you are talking about issues between the
2 individuals Tom Miyano and Steve Miyano and MMU?
3 **Q. Any survey that tested the likelihood**
4 **of any confusion between any of the MiyanoHitec**
5 **people and MMU?**
6 A. You mean whether or not we took -- we
7 did a survey?
8 **Q. That is correct. Any survey?**
9 A. No.
10 **Q. I guess before we take a short break,**
11 **is MMU claiming that Tom Miyano cannot use his**
12 **full name in the machine tool trade?**
13 MR. MANZO: Object to form.
14 BY THE WITNESS:
15 A. If by full name you mean Toshiharu
16 Miyano.
17 BY MR. BAKER:
18 **Q. Or Tom Miyano.**
19 MR. MANZO: Same objection.
20 BY THE WITNESS:
21 A. The name Miyano has already been
22 established as our brand name. All we want is to
23 stop use of similar brand name.
24 MR. BAKER: Let's take a break.

90

1 (A RECESS WAS HAD.)
2 BY MR. BAKER:
3 **Q. Welcome back, Mr. Minemura.**
4 **Just so we are absolutely clear, is it**
5 **MMU's position that any use of their family name**
6 **Miyano by Tom and Steven Miyano would infringe**
7 **Miyano Machinery USA's trademark?**
8 MR. MANZO: Object to form.
9 BY THE WITNESS:
10 A. I believe that it is infringement no
11 matter who uses it.
12 BY MR. BAKER:
13 **Q. And I am focusing solely on Tom Miyano**
14 **and Steve Miyano because it is their family name.**
15 **So could you just focus your answer just on Tom**
16 **Miyano and Steve Miyano.**
17 MR. MANZO: Same objection.
18 BY THE WITNESS:
19 A. It is the same.
20 BY MR. BAKER:
21 **Q. Since MMU learned of Tom and Steven**
22 **Miyano's use of their surname in the machine tool**
23 **trade, has there been any damage to MMU's**
24 **reputation in the machine tool trade?**

91

1 A. You mean specifically.
2 **Q. Specifically what?**
3 A. You mean specific harm?
4 **Q. Any harm?**
5 A. As far as I know, there has not been
6 any to this point, but I am concerned about
7 future.
8 MS. LEWIS: Excuse me. I think he said I
9 think. A little different from as far as I know.
10 He thinks so far no damage.
11 MR. BAKER: Even more speculative is what
12 you are saying?
13 MS. LEWIS: Yes, he said "I think."
14 BY MR. BAKER:
15 **Q. Why do you think there would be damage**
16 **in the future?**
17 A. For example, we have received the
18 lists of exhibitors at IMTS show this year and
19 also layout map for the booths. Already within
20 the list of exhibitors the name our name Miyano
21 and MiyanoHitec are listed next to each other.
22 Within the floor layout map, our
23 booth is marked Miyano, simply Miyano. And
24 MiyanoHitec Company, their booth is marked Miyano

92

1 Hitec with two lines. I believe that naturally
2 the guides for the exhibitors and based on the
3 exhibitor list and floor map and floor plan so
4 that it is inevitable that our dealers and our
5 users and other parties concerned would be
6 confused by that.
7 **Q. You think that customers in the**
8 **machine tool trade will be unable to tell the**
9 **difference between Tom and Steven Miyano Machinery**
10 **and Miyano Machinery USA?**
11 A. I believe that some of those -- some
12 would be able to tell the difference and others
13 would not be able to. I can't say what ratios
14 those would be in, but I think it is clear that
15 some would be confused by that.
16 **Q. What percentage do you believe will be**
17 **confused?**
18 A. I believe it depends on the party.
19 For example, the ratio, the percentage would be
20 low among the existing -- our existing customers
21 and our existing dealers. But there are
22 different people in those groups as well. Some
23 of those people may be confused and
24 misunderstand. And I believe that most of

93

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIYANO MACHINERY USA INC.,

Plaintiff,

v.

CASE NO. 08-C-526

MIYANOHITEC MACHINERY, INC.,
THOMAS ("TOM") MIYANO, A/K/A
TOSHIHARU MIYANO AND
STEVEN MIYANO, A/K/A SHIGEMORI
MIYANO,

Defendants.

DEPOSITION OF YOSHIHARU SAITO

April 17, 2008
United States Consulate
Osaka, Japan
9:06 a.m. - 3:16 p.m.

10:03:00 1 long. I'm very tired. On November 7 of 2006, I
10:03:08 2 had lunch at an Italian restaurant at the site
10:03:11 3 where JIMTOF was being held and there were --
10:03:13 4 during the lunch, Toshiharu Miyano discussed eight
10:04:37 5 proposals with me."

10:04:44 6 Q. Could you tell us what those eight
10:04:49 7 proposals are?

10:04:58 8 A. The first matter concerned the fact that
10:05:02 9 Mr. Miyano had become a member of the minority
10:05:06 10 association, and he brought along a newspaper
10:05:12 11 showing that. He told me about the substance of
10:05:20 12 this issue of minorities and said that large
10:05:30 13 corporations were obliged to purchase from
10:05:34 14 minorities. Mr. Miyano said that he could act as
10:05:39 15 an agent for machineries and, thereby, lift the
10:05:39 16 ratio of corporate procurement from minorities, and
10:05:42 17 he asked me whether I would let him act as such an
10:05:46 18 agent.

10:05:48 19 CHECK INTERPRETER: He also said that he
10:05:49 20 became a member of minority association in Chicago.

10:05:52 21 INTERPRETER: I thought I said Chicago.
10:05:55 22 I apologize.

23 CHECK INTERPRETER: And also used the
24 word "minority contents." Do you want to include
25 that in your translation or not?

10:06:10 1 INTERPRETER: I used "substance."

10:06:12 2 BY MR. BAKER:

10:06:15 3 Q. And what did you say to him?

10:06:16 4 A. What I initially did was just listen to
10:06:19 5 what he had said.

10:06:21 6 MR. MANZO: Do you want to let him finish
10:06:23 7 to what were the eight points or do you want him to
10:06:28 8 go on from there? You're interrupting the answer.

10:06:29 9 MR. BAKER: Actually, I'm not. He
10:06:30 10 stopped talking, so I asked him the question.

10:06:31 11 BY MR. BAKER:

10:06:33 12 Q. Were you finished with the eight points?

10:06:47 13 A. That's one.

10:06:53 14 Q. Right. Okay. And just dealing with that
10:06:54 15 one, did you say anything to him?

10:06:58 16 A. I just said, "Really?" And made no
10:07:35 17 specific comment.

10:07:37 18 Q. And then would you talk about the second
10:07:41 19 point?

10:07:47 20 A. Well, I don't recall the order of these
10:07:50 21 items, but a second one was concerning a new
10:07:54 22 development idea he had for a new hybrid axle
23 system, and asking whether we would buy that.

24 Q. Did you say anything to that?

25 A. I just listened to him. A third item

11:17:48 1 by long?

11:17:52 2 Q. What I mean by short and long are
11:18:14 3 perhaps, would you say typically it takes a week to
11:18:18 4 sell a customer on Miyano Machinery products or six
11:18:28 5 months?

11:18:32 6 A. Some cases, one week; some cases, six
11:18:39 7 months; in other cases, two years.

11:18:44 8 Q. Would you say it is more common that it
11:19:00 9 takes several months to years, or more common that
11:19:15 10 it takes just a few days or a week to sell a
11:19:50 11 Miyano, any Miyano Machinery product?

11:19:56 12 MR. MANZO: Object to form.

11:20:05 13 A. Well, I can't be clear about this. Some
11:20:10 14 months, three months. But it is the client that
11:20:15 15 decides that, depending on their desire. We just
11:20:18 16 sell and the client may say they'll go buy
11:20:19 17 immediately. But one can't simply, simplify this
11:20:19 18 because we're not the people who decide on the
11:20:21 19 sale.

11:20:27 20 BY MR. BAKER:

11:20:44 21 Q. Would you say it typically is much
11:21:11 22 longer, takes much more time to sell Miyano
23 Machinery products to first-time buyers?

24 MR. MANZO: Object to form.

25 A. No, the issue of time does not relate to

EXHIBIT 4

8874JSNAGASAWA

0001

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MI YANO MACHINERY USA INC.,)
)
Plaintiff,)
)
-vs-) CIVIL ACTION
) NO. 08 C 526

MI YANOHI TEC MACHINERY,)
INC., THOMAS ("TOM") MI YANO)
a/k/a TOSHI HARU MI YANO and)
STEVEN MI YANO, a/k/a)
SHI GEMORI MI YANO,)
)
Defendant.)

11

12 DEPOSITION OF TOSHIYUKI NAGASAWA

13 MAY 15, 2008 - 9:50 A.M.

14

15 The Deposition of TOSHI YUKI NAGASAWA,
16 taken pursuant to the Rules of Civil Procedure
17 for the United States District Courts pertaining
18 to the taking of depositions, taken before Jerry
19 Satterlee, a Certified Shorthand Reporter within
20 and for the State of Illinois, at 200 West Adams
21 Street, Suite 2850, Chicago, Illinois.

22

23

24

8874JSNAGASAWA

15 Mi yano Machi nery Japan in thei r deci si on maki ng
16 process, is it your opi ni on based on your years of
17 involvement with sales that that customer is
18 likely to make a quick deci si on to purchase a
19 machine tool from Mi yano Machi nery USA?

20 THE INTERPRETER: Could you repeat that.

21 (THE QUESTION WAS READ.)

22 MR. MANZO: Object to the questi on,
23 foundati on, form, completeness.

24 BY THE WITNESS:

0049

1 A. Not frequently.

2 BY MR. FRANCISSEN:

3 Q. Based on your experience in sales,
4 what is that type of customer likely to
5 investigate in order to make the deci si on to
6 purchase a machine tool from MMU?

7 A. Basically, it is a price and the
8 specs, but on top of that another issue is how
9 fast machinery can produce the product.

10 Q. How long do you think such an
11 investigation would take in your opi ni on?

12 A. It all depends customers, but based
13 on my experience, it takes anywhere from three
14 months to a year and a hal f.

15 Q. And during that three months to a year
16 and a hal f, would such a purchaser have frequent
17 contact with MMU?

18 MR. MANZO: Object to the form and
19 foundati on.

20 BY THE WITNESS:

21 A. I believe it is a catch, playing

EXHIBIT 5

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Miyano Machinery USA Inc.,)	
)	
Plaintiff,)	
)	Civil Action No. 08 C 526
v.)	
)	Hon. Virginia Kendall
MiyanoHitec Machinery, Inc.,)	
Thomas ("Tom") Miyano, a/k/a)	Magistrate Judge Nolan
Toshiharu Miyano and)	
Steven Miyano, a/k/a Shigemori)	
Miyano,)	
)	JURY TRIAL DEMANDED
Defendants)	
<hr style="border: 0.5px solid black;"/>)	
)	
MiyanoHitec Machinery, Inc.,)	
Thomas ("Tom") Miyano, a/k/a)	
Toshiharu Miyano and Steven)	
Miyano, a/k/a Shigemori Miyano,)	
)	
Counterclaim-Plaintiffs)	
)	
v.)	
)	
Miyano Machinery USA Inc.)	
)	
Counterclaim-Defendant)	
)	
and)	
)	
Miyano Machinery, Inc.)	
)	
Third-Party Defendant)	

**PLAINTIFF & COUNTERDEFENDANT MIYANO MACHINERY USA, INC.'S
RESPONSES TO COUNTERCLAIMANTS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure,
Plaintiff and Counterdefendant Miyano Machinery USA, Inc. (hereinafter

INTERROGATORY NO. 14

State in detail the circumstances surrounding Counterdefendants' knowledge of Counterclaimants' activities relating to the design or sale of machine tools on or before February 20, 2007 and identify the three persons (other than Counterdefendants' counsel of record in this action) most knowledgeable about same.

Objections/Response:

MMU incorporates its General Objections, and further objects to this Interrogatory as vague and ambiguous to the extent it refers to the "circumstances" without providing any specification or identification thereof. MMU objects to this interrogatory to extent it seeks information protected by the attorney-client privilege and work product doctrine. Subject to and without waving its objections, MMU answers as follows.

On November 7, 2006 Mr. Saito and Mr. Nakagiri met with Tom and Steven Miyano and were informed that HiTec Machinery International, Inc. had been formed. At that meeting Mr. Saito received business cards from Tom and Steven Miyano which listed Steven Miyano as president of HiTec Machinery International, Inc. and Tom Miyano as director and designer of HiTec Machinery International, Inc. (See MMU0017490). These business cards bore a Winged H mark. Steven Miyano's business card is shown below.



At the November 7, 2006 meeting, Tom and Steven Miyano, among other things: 1) requested copies of drawings of the LS-12C machine because they want to produce it in India or China under the Miyano name; 2) asked about incorporating into Miyano machines a hybrid acceleration system that Tom Miyano had invented; and 3) asked to purchase MMU's U.S. trademarks. (MMU0017493 and Deposition of Saito, pages 68 line 18 – page 71, line 14). After Mr. Saito declined these requests, Steven Miyano replied by e-mail to Mr. Saito on November 16, 2006 that "We hope we can improve together through friendly rivalry". (MMU0017488-89).

Some time in late January 2007 or early February 2007 MMU received a business card showing Tom Miyano's name as CEO and Director of a company called MiyanoHitec Machinery, Inc., as shown in paragraph 49 of the Complaint and in MMU 0000553. On this card, compared to the cards received in November 2006, the corporate name had been changed from HiTec Machinery International, Inc. to MiyanoHitec Machinery, Inc., the Winged H

had been changed to a Winged M, and Tom Miyano's position had changed from director and designer to CEO and director.

The individual knowledgeable include Yoshiharu Saito and Henry Marchionne.